

Before the
Federal Communications Commission
Washington, D.C. 20005

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Southwestern Bell Telephone Company)	CC Docket No. 97-158
Tariff F.C.C. No. 73, Transmittal No. 2633)	CCB/CPD 97-67

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S.

On December 15, 1997, Southwestern Bell Telephone Company (SWBT) filed a petition for reconsideration of the Commission's Order rejecting SWBT's Transmittal No. 2633.¹ USTA strongly supports SWBT's request and urges the Commission to allow SWBT's Transmittal No. 2633 to take effect. SWBT has made the requisite showing necessary to justify application of the competitive necessity doctrine. As will be discussed by USTA, pricing flexibility which enables incumbent LECs to compete in access markets, including the ability to respond to requests for proposals (RFPs) as requested by SWBT, is long overdue. The Telecommunications Act of 1996

¹Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, CC Docket No. 97-158, Transmittal No. 2633, Order Concluding Investigation and Denying Application for Review, released November 14, 1997. [Tariff Rejection Order].

requires a de-regulatory, pro-competitive paradigm; the competition which already exists in access markets justifies relief from current regulatory constraints; and consumers deserve the benefits which efficient competition will bring. Current regulation of access will not permit the market to operate in an effective or efficient manner.

USTA first recommended that the Commission adopt an appropriate competitive paradigm for access pricing in 1993. The Commission has taken the necessary first step by adopting a market-based approach to access pricing in CC Docket No. 96-262. Such an approach is consistent with the general economic principle that market forces, where sufficiently robust, should be relied upon to determine results.

USTA has also argued that the best way to establish the appropriate paradigm would be to adopt a regulatory structure which allows LECs a reasonable opportunity to respond to competitive situations, as was suggested by Commissioners Furtchgott-Roth and Powell in their separate statements released with the order. A piecemeal approach will only result in a multitude of requests for relief from the current rules which are necessary as LECs attempt to respond to competition in order to meet the needs of customers. USTA strongly agrees with these Commissioners that it is imperative for the Commission to establish a clear and achievable path for LECs to obtain pricing flexibility that is responsive to competition.

Regulatory relief is urgently needed. Competitors have successfully been able to capture significant LEC special access traffic and substitute their direct connections for LEC switched access to serve high volume end users long before the passage of the 1996 Act and the Commission's access reform Order. Overall CAP and CLEC revenues doubled between 1995

and 1996.² CLEC revenues and market share are predicted to grow from \$2 billion to \$3.3 billion or by sixty percent in 1998 and \$5 billion or by sixty-six percent in 1999 according to study recently released by Merrill Lynch.³

Because competitors target high volume customers in dense areas, LECs have already lost a substantial number of high volume customers. By the fourth quarter of 1994, SBC had already lost approximately 41.2 and 31.6 percent, respectively, of the high capacity special access markets in Dallas and Houston.⁴ By the first quarter of 1995, LEC high capacity service losses to competitors were as high as: 39 percent in Philadelphia, 35 percent in Pittsburgh, 32 percent in Washington, D.C., 27 percent in Baltimore, 39 percent in Los Angeles, 37 percent in San Francisco, 50 percent in New York City, 44 percent in the greater New York metropolitan region and 37 percent in Boston. Overall, by March of 1995, CLECs and CAPs had captured 10 to 15 percent of the nationwide carrier access market and had resulted in LEC reductions in rates on comparable service by 20 to 30 percent between 1991 and 1994.⁵ Again, these losses occurred before passage of the 1996 Act.

Now, as a result of the 1996 Act, competitors have even more tools to assist them in competing in access markets and the trends in access markets described above are continuing at an even faster rate. By the third quarter of 1996, competitors had captured 55.2 percent of the

²New Paradigm Resources Group, Annual Report on Local Telecommunications, 1996-1997.

³*Communications Daily*, "CLECs Revenue and Market Share Predicted to Grow 60% Next Year", Vol.17, No. 237, December 10, 1997 at p.2.

⁴USTA Comments, CC Docket No. 96-262, filed January 29, 1997 at p. 44.

⁵Bernstein Research, Telecommunications: Convergence and Divergence, March 1995.

high capacity Chicago market and 48.8 percent of the Grand Rapids market.⁶ Bell Atlantic estimated that its 1996 market shares for high capacity services were 46.5 percent in Southern Midtown Manhattan and 54.3 percent in the greater New York City Metropolitan area.⁷ As of July 1, 1997 there were a total of 1,231 interconnection agreements. The RBOCs and GTE have spent over \$4 billion to open their markets to competitors.⁸ Approximately 927,443 lines were lost to competitors by October 1997 and 6,476 operational support system requests were being processed daily by competitors. In the Bell South region more than 320 CLECs have been authorized to provide service including 41 CAPs that have switching capability.⁹ As of August 1997, more than 4,000 unbundled loops and 79,000 resold lines were in service in that region, with 76 percent of the resold lines and 65 percent of the unbundled loops concentrated in just two states. In the Bell Atlantic region, unbundled loops and minutes of use have doubled since January 1997 and resold lines grew by a factor of over seven.¹⁰ Obviously, customers do have choices and competitors are winning customers. Further, there are no barriers to continued growth by competitors which means that as competitive forces accelerate and pricing flexibility is further delayed, market distortions will also accelerate and customers will be denied optimum benefits.

⁶USTA Comments, CC Docket No. 96-262, filed January 29, 1997 at p. 44.

⁷Ex Parte Letter from Ms. Dee May to Mr. Paul D'Ari, Common Carrier Bureau, Competitive Pricing Division, September 10, 1997.

⁸USTA Press Release, October 22, 1997.

⁹Comments of Bell South, CCBPol 97-9, August 11, 1997.

¹⁰Bell Atlantic, Competition Progress Report, September 26, 1997.

Customers should not be forced to switch suppliers just because regulation prevents the incumbent from competing. Such a result will not allow competition to produce hoped-for efficiencies and will result in significant welfare losses because of the inability of incumbents to meet the needs of customers. In fact, in order to avoid inefficient investment, asymmetric regulatory obligations should be eliminated when markets are first fully opened to competitors. In order for customers and competitors to be given accurate and efficient price signals, competition involving all market participants must occur at the same time so that entrants are given accurate market signals which lead to entry in those instances where their economic cost of providing service are less than or equal to the incumbents' economic cost. Otherwise, market signals will lead to wasteful use of society's resources.

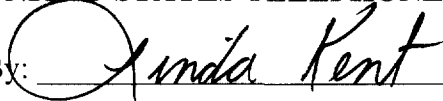
Finally, there is no need to perpetuate regulation in order to protect competitors. A provider's efficiencies and abilities to fulfill customer needs should determine its success in a market. Policies aimed at protecting competitors only serve to encourage competition in the hearing room and not in the marketplace as the beneficiaries of Commission protection have strong vested interests in maintaining that protection, regardless of the ultimate impact on the marketplace. Among LEC competitors in access markets are AT&T-Teleport, MFS-Worldcom-MCI and Sprint. Such entities are not new, inexperienced corporations with no ability to acquire key resources. They are global corporations with no need for Commission protection. If competition is truly the national policy, the Commission should not micro manage access markets and penalize incumbents for achieving efficiencies which the 1996 Act sought to encourage by not letting them compete with these companies.

Allowing LECs to respond to RFPs will benefit customers by ensuring that the prices they pay reflect the services they want to buy. It will also promote efficient use of resources by more closely aligning customer needs to a provider's costs and by tailoring services to meet specific demands thus avoiding inefficient investment. RFPs are a common business practice and one which the Commission itself has adopted in its new universal service mechanism to ensure that schools and libraries receive fair prices for telecommunications services. It does not make sense for the Commission to deny other customers the same benefits for access services.

Since the Commission has not yet adopted a structure to permit pricing flexibility in competitive situations, in the interim LECs must seek waivers of and exceptions to the current rules to respond to customer requests. SBC has met the requirements for application of the competitive necessity doctrine which the Commission has used to permit a discounted offering for a service. USTA urges the Commission to complete its rulemaking to provide much-needed pricing flexibility and, in the interim, to grant SBC's petition. Such action will ensure that the full benefits of a pro-competitive policy reach telecommunications customers.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:  _____

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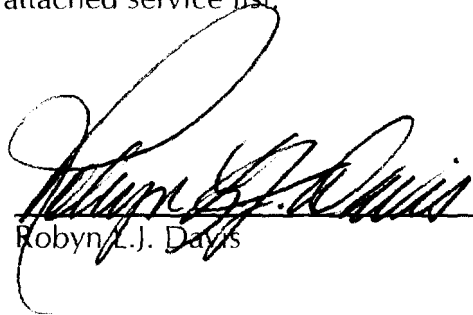
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CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on January 12, 1998 Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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